

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY E. KEITH

Claimant

VS.

WICHITA SOUTHEAST KS. TRANSIT

Respondent

AND

LIBERTY MUTUAL INSURANCE CO.

Insurance Carrier

Docket No. **256,723**

ORDER

Claimant appealed Administrative Law Judge Jon L. Frobish's Award dated May 21, 2001. The case was placed on the summary docket for disposition without oral argument.

APPEARANCES

Claimant appeared by his attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Anton C. Andersen of Kansas City, Kansas.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUE

The sole issue raised on review by the claimant is the nature and extent of claimant's disability.

FINDINGS OF FACT

Having reviewed the entire evidentiary record filed herein including the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

The facts are essentially undisputed. The claimant was employed as a truck driver for the respondent. On December 9, 1999, the claimant sustained a work-related injury while hooking two trailers together. The claimant had lifted the tongue on a dolly and the dolly rolled forward into a truck which was backing up. The claimant's left hand was jammed between the dolly and the trailer. The claimant injured his fingers and wrist.

The claimant went to the Minor Emergency Center where his hand was splinted and he was referred to Dr. Artz. Dr. Artz had x-rays taken of claimant's hand which revealed minimal displacement fractures of the fourth and fifth metacarpals. The claimant was placed in a short-arm cast.

When the cast was removed the claimant continued to have persistent pain and discomfort in his wrist. Dr. Artz diagnosed the claimant with de Quervain's and tenosynovitis at the wrist. Dr. Artz testified that de Quervain's is caused by swelling and inflammation of the tendons that go through a tunnel on the thumb side of the wrist at the distal radius.

On April 20, 2000, following a trial of conservative treatment, which consisted of anti-inflammatory medication, Dr. Artz performed a surgical release of the tunnel that the tendons pass through on the thumb side of the wrist. Dr. Artz released the claimant to return to work on June 27, 2000. The claimant testified that he continues to have pain in his wrist and thumb. Claimant also complains of loss of strength and motion in his fingers.

Dr. Artz testified that the surgery resulted in some mild limited motion of the wrist. Dr. Artz relied upon a functional capacity evaluation in order to rate the claimant's impairment. The functional capacity evaluation indicated limited wrist motion but did not note any limitations in claimant's fingers. Based upon the range of motion charts in the Fourth Edition of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA Guides), Dr. Artz rated the claimant with a 6 percent permanent partial impairment to the left upper extremity.

The claimant was referred by his attorney for an evaluation with Dr. Pedro A. Murati on August 16, 2000. Dr. Murati noted the claimant complained of pain in his left wrist and thumb. Dr. Murati initially rated the claimant, using table 16 of the Fourth Edition of the AMA Guides, as status post-first dorsal extensor compartment release with a 10 percent left upper extremity impairment. For range of motion loss of the first, fourth and fifth digits, Dr. Murati additionally rated the claimant with a 7 percent impairment to the hand which converts to a 6 percent impairment to the left upper extremity. The doctor combined the ratings for a 15 percent impairment to the left upper extremity.

Upon cross-examination, Dr. Murati agreed that table 16 of the *AMA Guides* was the wrong table. Dr. Murati then noted that table 27 was more appropriate but because there was not a total resection of the wrist he would rate the claimant at 10 percent instead of the 24 percent noted in that table. Dr. Murati further testified that he always rates at 10 percent for a de Quervain's release no matter what result is obtained. Dr. Murati admitted that there is no place in the *AMA Guides* that says a de Quervain's release results in a 10 percent impairment.

The Administrative Law Judge noted that because both physicians agreed the range of motion loss resulted in a 6 percent rating to the upper extremity that finding would be adopted. The Judge added 2 percent for pain and determined the claimant was entitled to an 8 percent permanent partial impairment to the left upper extremity at the forearm.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.¹ "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."²

There is no dispute that claimant is entitled to compensation based upon the scheduled injuries to his fingers and wrist. The injury at the wrist is considered a loss to the forearm.³ Because this is a scheduled member injury, the impairment is determined using the Fourth Edition of the *AMA Guides*, if the impairment is contained therein.⁴

The treating physician, Dr. Artz noted the fractures to the fingers had healed completely without any loss of sensation or range of motion. Dr. Artz referred the claimant for a functional capacity evaluation which included range of motion measurements taken according to the *AMA Guides*. Utilizing those findings Dr. Artz then referred to the range of motion charts in the *AMA Guides* and concluded that the limited loss of wrist range of motion calculated to a 6 percent rating to the left upper extremity.

¹K.S.A. 1999 Supp. 44-501(a).

²K.S.A. 1999 Supp. 44-508(g).

³K.A.R. 51-7-8(c)(4).

⁴K.S.A. 1999 Supp. 44-510d(a)(23).

Dr. Murati also concluded that claimant sustained a 6 percent impairment to the left upper extremity based upon loss of range of motion, however, his opinion was based upon loss of range of motion to the first, fourth and fifth digits. Dr. Murati further testified that claimant did not have sensory or strength deficits in his fingers.

Dr. Murati then added a 10 percent rating for the de Quervain's surgery. Initially, the doctor relied upon an admittedly incorrect table in the *AMA Guides*. He then attempted to use a different table which also did not correspond to claimant's surgery. Finally, the doctor made the statement that he simply considers a de Quervain's surgery a 10 percent impairment irrespective of the result. Such assertion diminishes the weight to be accorded the doctor's opinion in this instance especially where the doctor further noted that the *AMA Guides* do not state that a de Quervain's release always results in a 10 percent impairment rating.

The Board concludes the more persuasive evidence in this case was provided by the treating physician, Dr. Artz, who relied upon the range of motion charts of the *AMA Guides* to arrive at his determination regarding impairment in this case. Both doctors noted that claimant had not sustained any sensory or strength deficits in his fingers and the functional capacity evaluation did not note any range of motion loss in the fingers. Although the Administrative Law Judge added 2 percent for pain, neither doctor specifically included a percentage rating for pain. Accordingly, it is the Board's determination that the claimant is entitled to a 6 percent permanent partial impairment to the left upper extremity at the forearm.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Jon L. Frobish dated May 21, 2001, is modified to reflect the claimant sustained a 6 percent permanent partial impairment to the left upper extremity at the forearm.

The compensable weeks for a scheduled injury are computed as follows:

The 200 weeks on the schedule minus 28.57 weeks of temporary total equals 171.43 times 6 percent of disability equals the number of compensable weeks. Therefore, the claimant is entitled to 28.57 weeks of temporary total disability at the rate of \$383 per week or \$10,942.31 followed by 10.29 weeks of permanent partial compensation at the rate of \$383 per week in the amount of \$3,941.07 for a 6 percent loss of use of the left upper extremity making a total award of \$14,883.38.

IT IS SO ORDERED.

Dated this 31st day of August 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant
 Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
 Jon L. Frobish, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director